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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 987 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIPUL NANDLAL RAMANI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 987 of 1994

MR HM PARIKH for Petitioner No. 1

MR IM PANDYA, AP for Respondent No. 1

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 13/03/2003

ORAL JUDGEMENT

1. The appellant, who was original accused no. 1 in Summary Case No. 5/1994 in the Court of the

learned Special Judge, Bhavnagar, has challenged his conviction u/S. 3 read with sec. 7 and 12 AA of the Essential Commodities Act, 1955 (hereinafter referred to as 'the Act'). Vide judgment dated 1st October, 1994 he has been convicted and sentenced to suffer RI for two years and to pay fine of Rs.2,000/-, in default RI for six months for the aforesaid offences.

2. It is the case of the prosecution that on 22nd March, 1993 at about 2.30 p.m. complainant of this case Mr. S.H. Kathi alongwith his staff was on patrolling in the areas of Bhavnagar city. At about 3.30 p.m. he came near temple of Lord Hanuman and he noticed that about 45 cylinders of cooking gas were concealed in the cluster of shrubs of babul. He, therefore, went there and found that the present appellant was in possession of those concealed cylinders. He was, therefore, arrested under the provisions of section 41 (1) (d) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') and the cylinders were attached under the provisions of section 102 of the Code. A panchnama was drawn and necessary entry was got made in the register of "A" Division Police Station by giving information to the Police Station Officer. He thereafter entrusted the cylinders to the Police of "A" Division Police Station and also handed over the appellant to them. The police thereafter intimated the Collector about the recovery of the gas cylinders and arrest of the appellant. Hence, the Collector called for the relevant papers by his letter dated 26th March, 1993. All the relevant papers were made available to the Collector and thereafter the Collector passed orders dated 19th August, 1993 and 16th October, 1993 for lodging complaint against the appellant. During investigation of the case it was revealed that alongwith appellant original accused nos. 2 and 3 were having partnership and the gas cylinders were supplied by original accused no. 4 to them. In view thereof, all the four persons were charge-sheeted in the Court of the Ld. Chief Judicial Magistrate, Bhavnagar, who forwarded the case to the Court of Ld. Special Judge since the offence is exclusively triable by that Court by virtue of section 12AA of the Act. Before the Ld. Special Judge the case was numbered as Special Case No. 5 of 1994.

2.1. At the trial the Ld. Judge proceeded against the accused in a summary way as provided under clause (f) of sub-section (1) of section 12AA of the Act and recorded their plea by reading out the accusation levelled against them. It may be noted here that while recording the plea of the appellant as well as other

original accused, they were informed that on 22nd March, 1993 the present appellant was found in suspicious condition having 45 gas cylinders which were concealed in the cluster of shrubs of babul near the temple of Lord Hanuman in Jawahar colony and appellant was not in a position to explain from where those cylinders were brought by him. It was further alleged that original accused nos. 2 to 4 rendered assistance to the appellant and thus all of them had contravened provisions of section 3, which is made punishable u/S. 7 of the Act. To this, the appellant as well as other accused pleaded not guilty and claimed to be tried.

2.2. At the trial, prosecution examined Sursing Hadabhai Kathi, P.W. 1 Exh. 10, Lehrubha Mansing P.W. 2 Exh. 17, Abdul Abbas P.W. 3 Exh. 18 and Gafarbhai Hajibhai P.W. 4 Exh. 20. Apart from the oral evidence the prosecution also relied on the documentary evidence such as the FIR, the authority granted by the Collector to lodge complaint, the panchnamas drawn at the time of arrest of the appellant and seizure of 45 cylinders of cooking gas.

2.3. P.W. 1 Sursing Hadabhai Kathi has stated that on 22nd March, 1993 he was working as Police Sub Inspector and at that time he was attached to the Special Squad at Bhavnagar. On 22nd March, 1993 he alongwith his other staff members, namely Lehrubha Mansing, Baldevsing, etc., was on patrolling and at about 2.30 p.m. he had gone to area near Hanuman temple known as Bavliya Hanuman in Jawaharnagar locality. There he had noticed one person concealing in suspicious manner the cylinders of cooking gas in a cluster of babul shrubs and on inquiry, that person revealed his name to be Vipul Nandlal, resident of Bhavnagar. He has further stated that 45 cylinders of cooking gas were found from the place and the person could not give satisfactory explanation regarding his possession of those cylinders. He has further stated that a panchnama was drawn and the cylinders were seized and Vipul Nandlal was arrested. On further inquiry it was revealed that Vipul had brought these cylinders from one Ghanshyam. He has further stated that he gave due intimation to "A" Division Police Station, Bhavnagar under which the area near Bavliya Hanuman was. This witness has also stated that he had thereafter forwarded all the relevant papers to the Collector of Bhavnagar district seeking his permission to prosecute Vipul Nandlal and others involved in the offence. On receiving the permission, complaint was lodged in the Court of learned Special Judge, alongwith which the papers like report made to the Collector and

the papers received from the Collector were produced. In the cross-examination he has admitted that he had not stated in the complaint that the appellant was clandestinely dealing in the cooking gas. He has, however, denied the suggestion that he had used these words only with a view to show that the said cylinders of cooking gas were possessed by the appellant. He has further admitted that the remand of the accused was asked for from the Ld. Magistrate, but the same was not given. He has also stated that he had not made any inquiry as to whether the cylinders were stolen from any of the gas agencies in the city of Bhavnagar. He has further stated that he had called two passers by to act as panch and no one was specially sent for summoning the panchas.

2.4. The prosecution has also placed reliance on the evidence of Lehrubha Mansing P.W. 2 Exh. 17, who has, more or less, deposed on the line of P.W. 1.

2.5. Abdulbhai Abbasbhai P.W. 3 Exh. 18 has stated in his evidence that while he was proceeding towards Kumbharvada on 22nd March, 1993 he was called by the officers of the Special Squad near the temple of Hanumanji to act as a panch. When he went there 45 cylinders were lying there and in his presence the panchnama was drawn and his signature was obtained. He has further stated that the appellant was present at the time when the panchnama was drawn. He has identified the appellant in the Court room. In the cross-examination of this witness, unsuccessful attempt has been made by the defence to show that he was a chosen panch.

2.6. Lastly the prosecution has relied on the evidence of Gafarbhai Hajibhai Deraiya P.W. 4 Exh. 20, who was entrusted the investigation in a complaint under the provisions of the Act by the P.S.O. He has stated that from the statement of the appellant recorded during investigation, it was found that Patel Chetan Chandrakant and Jitendrasinh Jorubha Gohil were also involved with him and they had jointly started business of distributing gas cylinders. He has further stated that the appellant's statement revealed that these cylinders were brought from one Mahesh Premchand of Ahmedabad. He has further sated that on completion of the investigation the charge-sheet was submitted and all the accused were arrested and produced before the Court. He has also stated that as per the instructions given by the Collector Mr. Kathi had lodged the complaint as the complainant of the case, in "A" Division Police Station. In the cross-examination of this witness nothing has been brought out which could be of any help to the defence.

2.7. On completion of the oral evidence further statements of the accused were recorded u/S. 313 of the CODE.

3. At the end of the trial the Ld. trial Judge came to the conclusion that offence against the accused was proved. He, however, acquitted original accused nos. 2 to 4 on the ground that the requisite permission to prosecute them from the Collector was not given. So far the appellant is concerned, the Ld. trial Judge convicted him for the aforesaid offences and awarded sentence as stated above. In these circumstances, the present appeal is filed before this Court.

4. I have heard Mr. H.M. Parikh, learned advocate for the appellant and Mr. I.M. Pandya, Ld. APP appearing for the respondent - State. According to Mr. Parikh, there is inherent infirmity in the case of the prosecution which would vitiate the entire trial. He has submitted that though the appellant was prosecuted for committing offence made punishable u/S. 7 of the Act, the prosecution is totally silent as to which order issued u/S. 3 of the Act and what particular provision of that order had been contravened by the appellant so as to hold him guilty for committing offence u/S. 3 read with section 7 of the Act. No other submission has been advanced by him.

4.1. As against that, Mr. Pandya, Ld. APP has supported the judgment and order of the trial Court and has submitted that the prosecution by leading cogent and reliable evidence has conclusively proved the guilt of the appellant and, therefore this appeal has no merit and the judgment and order of conviction and sentence passed by the trial Court are required to be upheld.

5. With a view to reappreciate the evidence and also to appreciate the contentions raised by both the learned advocates, I have carefully gone through the record of the case.

6. It appears from the record that the appellant alongwith three other original accused was booked for committing offence u/S. 3 read with sec. 7 of the Act. Section 3 of the Act confers power on the Central Government to control production, supply, distribution, etc. of essential commodities. By virtue of subsection (2) of section 3 it has been empowered to issue orders as envisaged under subsection (1) of section 3 of the Act with regard to the items contained in

clauses (a) to (f). The other provisions of section 3 are not relevant for the purpose of deciding this case. Section 7 deals with penalties and the words of subsection (1) thereof are "If any person contravenes any order made under Section 3,". The rest of the provisions of this section provide for imposition of different penalties in respect of different clauses of subsection (2) of section 3 of the Act and also for forfeiture of the property in respect of which order has been contravened. So far the gist of the prosecution case is concerned, it says that the appellant and other accused were having clandestine dealing in the cooking gas cylinders. So far appellant is concerned, while recording his plea, it has been put to him that on 22nd March, 1993 at about 3.30 p.m. he was found by Police Sub Inspector Mr. Kathi of Special Squad, who was on patrolling alongwith his staff near Bavaliya Hanuman temple in Jawahar colony, in suspicious condition having 45 cylinders of cooking gas which were concealed in the cluster of babul shrubs and on inquiry he was not able to render any explanation regarding how he came into possession of these cylinders. It has been further put to him that in this surreptitious dealing he was aided by original accused nos. 2 to 4 and thereby they had contravened provisions of section 3 for which he had committed offence made punishable under Section 7 of the Act.

6.1. Section 12-AC of the Act provides for application of Code to proceedings before a Special Court. Section 2 (ia) of the Act defines "Code" means the Code of Criminal Procedure, 1973 (2 of 1973). As stated above, clause (f) of sub-section (1) of section 12-AA prescribes that all offences under the Act shall be tried in a summary way and provisions of sections 262 to 265 (both inclusive) of the Code shall, as far as possible, apply to such trial. Sections 262 to 265 (both inclusive) are contained in Chapter XXI of the Code. Section 262 of the Code deals with procedure for summary trial and it says that in trials under this chapter, the procedure specified in the Code for the trial of summons-case shall be followed subject to certain exceptions. Chapter XX of the Code deals with trial of summons-cases by Magistrate. Section 251 of the Code is contained in Chapter XX and it is required to be reproduced verbatim.

"251. Substance of accusation to be stated.-
When in a summons-cases the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be

stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge."

6.2. It may be noted here that though Sec. 251 of the Code. does not envisage a formal charge being framed in a trial of summons case, it does prescribe that the accused is required to be stated the particulars of the offence of which he is accused. Now what these particulars should be, some guideline can be derived from sec. 211 of the Code. which deals with contents of a charge in warrant triable cases.

"211. Contents of charge.-

(1) Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) The charge shall be written in the language of the Court.

(7) xxx xxx xxx xxx xxx "

Sub-sections (1) to (5) require that the accused is to be informed precisely and if there is name of the offence, by name, otherwise by describing the offence and the provision of law which constitute commission of the act of the accused an offence. This is the minimum that is needed to be done while framing the charge and even if no formal charge is required to be framed in a summons-case, compliance of the aforesaid requirement is a must.

6.3. Thus, at the time when the plea of the accused is being recorded, the concerned Court is required to inform him about the accusation levelled

against him. This would mean that he is required to be informed about the commission of the act by him which is complained of and which constitutes offence and the provision of law of which he is alleged to have committed breach of and the ultimate offence which would be constituted on account of committing such breach. It is a matter of common knowledge and judicial note can be taken of the fact that under the provisions of the Act and in particular provision of section 3 of the Act the Central Government as well as by virtue of delegation of power u/S. 5 of the Act, the State Government have issued number of orders in respect of different essential commodities. Such orders are statutory orders having force of law. It is, therefore, incumbent upon the prosecution as well as the trial Court to inform the accused about the accusation levelled against him including the particulars of the order issued u/S. 3 or u/S. 5, as the case may be, of which he is alleged to have committed the breach. In absence thereof, it will be very difficult for the accused to know with exactness what breach he had committed and how to defend his interest at the trial. If these details are not provided to him, it will simply render the accused groping in the dark and that would virtually amount to committing violation of the principles of natural justice. In the instant case while recording the plea of the appellant nothing more has been informed to him except what has been stated above. Not only that but the prosecution has also not produced on record any material which would indicate that the appellant has committed breach of particular provision of a particular order. Moreover, the prosecution has even not produced any material to show that the cooking gas is declared to be an essential commodity as provided under clause (a) of section 2 of the Act, nor the prosecution has shown that for maintaining or increasing supplies of essential commodity, namely the cooking gas or for securing equitable distribution and availability at fair price or for prohibiting the production, supply and distribution of such commodity order has been issued by the Central Government u/S. 3 or by the State Government by virtue of delegation of powers u/S. 5 of the Act. In absence of such vital evidence, it is very difficult to hold the appellant committing breach of a particular order issued u/S. 3 of the Act and thereby contravening the provision of section 3 which is made punishable u/S. 7 of the Act. If that be so, the conviction recorded by the learned trial Judge of the appellant for committing offence u/S. 7 of the Act for contravening the provisions of section 3 of the Act cannot be sustained. Even in the oral evidence of the prosecution witnesses no whisper has been

made about the alleged breach or violation of provisions of a particular order committed by the appellant. It is, therefore, difficult to believe and accept that the appellant has contravened the provisions of any order issued under section 3 of the Act. If the prosecution is unable to prove the contravention of provisions of order issued u/S. 3, no offence can be said to have been committed which is made punishable u/S. 7 of the Act by him. In view thereof, the finding given by the Ld. trial Judge is erroneous and it is hereby quashed and set aside.

7. In the result, the appeal is allowed.
The orders of conviction and sentence passed by the Ld. Special Judge, Bhavnagar dated 1st October, 1994 in Summary Case No. 5 of 1994 against the appellant are quashed and set aside. The fine, if paid, be refunded to the appellant. The appellant pending hearing of this appeal is released on bail by this Court. Hence, his bail bonds shall stand cancelled.

[AKSHAY H. MEHTA, J.]

* Pansala.